In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 894

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

R. A. SPROUSE

PETITION FOR REHEARING ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Comes now the Solicitor General, on behalf of the petitioner, and respectfully prays for a reconsideration by the Court of its order of March 2, 1942, denying certiorari herein.

Following the decision in *Eisner* v. *Macomber,* 252 U. S. 189, Congress undertook to modify the revenue acts so as to accord with what it thought to be the constitutional limitations upon the taxing power announced by that decision. However, it appeared some sixteen years later that in the confusion following *Eisner* v. *Macomber,* Congress had placed an unnecessarily sweeping inter

pretation upon that decision. See *Koshland* v. *Helvering*, 298 U. S. 441, 444–445. In order to forestall any possible future misunderstanding as to the exercise of the taxing power with respect to stock dividends, Congress in 1936 changed the statutory provisions so as to make taxability coextensive with the taxing power under the Constitution itself. Section 115 (f) of the Revenue Act of 1936.

Accordingly, since 1936, a stock dividend is relieved of tax under the statute, *only if the Constitution* so requires. The Government has long felt that *Eisner* v. *Macomber* was incorrectly decided, and since the question is one of Constitutional law, its only feasible recourse is to ask this Court for a reexamination.

We believe that the Constitution does not prevent the taxation of a distribution of corporate earnings in the form of stock dividends, and the statute relieves the dividend of tax only where required by the Constitution. In the case of one large corporation alone, distributions were made during 1941 to over 600,000 stockholders, the taxability of which is thought to depend upon *Eisner* v. *Macomber*. The instant case was presented to this Court in order promptly to determine the present status of *Eisner* v. *Macomber*.

The refusal of the Court to consider the question will result in unnecessary uncertainty in the audit of thousands of returns. It is respectfully

submitted that it is a matter of substantial public importance that the order denying the petition for certiorari be vacated and that the petition for certiorari be granted.

CHARLES FAHY,
Solicitor General.

I certify that this petition is presented in good faith and not for delay.

CHARLES FAHY,
Solicitor General.

MARCH 1942.

U. S. GOVERNMENT PRINTING OFFICE: 1942